IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 34998 of 2004(N)

OS.513/2004 of PRL.M.C.,NEYYATTINKARA
.....

PETITIONER:

ROSAMMAL, W/O. VARGHESE,
AGED 72, RETD. GOVERNMENT SERVANT, RESIDING AT
THERIAMVILAKATHU VEEDU, DHANUVACHAPURAM DESOM,
KOLLAIL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS:
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1. **Y.YOHANNAN, AGED ABOUT 55 YEARS,**
   THERIAMVILAKATHU VEEDU, DHANUVACHAPURAM DESOM,
   KOLLAIL VILLAGE, NEYYATTINKARA TALUK.

2. **BALAKUMAR, S/O. MANIAN @ MANIKYAN,**
   AGED ABOUT 35, THERIAMVILAKATHU VEEDU,
   DHANUVACHAPURAM DESOM, KOLLAIL VILLAGE,
   NEYYATTINKARA TALUK.

BY ADV. SRI.RAM MOHAN.G. For R1 & R2
SRI.G.P.SHINOD
SRI.MANU V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34998/2004 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF I.A.NO.3273/04 IN O.S.NO.513/04 ON THE FILE OF THE MUNSIFF'S COURT, NEYYATTINKARA DTD. 20/07/2004.**

EXT.P2: **COPY OF COMMISSION REPORT DTD. 6/08/2004 WITH PLAN I.A. NO.3273/04 IN O.S.NO.513/04.**

EXT.P3; **COPY OF I.A.NO.4729/04 IN O.S.513/04 DTD. 19/10/04 ON THE FILE OF THE MUNSIFF'S COURT, NEYYATTINKARA.**

EXT.P4: **COPY OF OBJECTION IN I.A.NO.4729/04 IN O.S.513/04 ON THE FILE OF THE MUNSIFF'S COURT, NEYYATTINKARA.**

EXT.P5: **COPY OF ORDER IN I.A.NO.4729/04 IN O.S.513/04 DTD. 12/11/2004 ON THE FILE OF THE MUNSIFF'S COURT, NEYYATTINKARA.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 34998 OF 2004

Dated this the 14th day of June, 2007

JUDGMENT

I do not find any warrant for setting aside Ext.P5 order dismissing an application for issuance of a fresh commission filed by the plaintiff in a suit for injunction for a measurement of the property and for preparation of a plan of the property. It is seen from the averments in the writ petition itself that the petitioner filed IA No.4729 of 2004 for setting aside the available commission report. It is open to the petitioner to pursue that IA. This judgment confirming Ext.P5 will not stand in the way of the learned Munsiff for passing appropriate orders on that IA. Naturally, if that IA is allowed the court will become obliged to issue fresh commission or depute the commissioner once again in which case the grievance of the petitioner will also be taken care of by the court.

The Writ Petition is dismissed subject to observations.

PIUS C. KURIAKOSE, JUDGE

btt